



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SEEMA, Inc.
File: B-255884
Date: April 13, 1994

Phillip E. Johnson for the protester.
Paul D. Warring, Esq., Department of the Air Force, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Awardee's bid bond was acceptable despite citation to an incorrect solicitation number where the bond otherwise identified the correct bid opening date and the services sought by the solicitation, and there was no other on-going procurement to which the bond could refer.
2. Award to a corporate bidder that was not in good standing at the time of bid opening was proper where the bidder was a viable corporation at bid opening under applicable state law.

DECISION

SEEMA, Inc. protests the award of a contract to Capitol Contractors, Incorporated under invitation for bids (IFB) No. F49642-93-B-A096, issued by the Department of the Air Force, for the construction of a building at Bolling Air Force Base, Washington, D.C. SEEMA contends that Capitol's bid should have been rejected as nonresponsive because its bid bond was defective and it was "not [a corporation] in good standing" at the time of bid opening.

We deny the protest.

The IFB, issued August 13, 1992, required the submission of a bid bond or other suitable bid guarantee in the amount of 20 percent of the bid. Capitol, a Maryland corporation, submitted the low bid at the September 24 bid opening. The bid bond submitted with Capitol's bid did not correctly reference the IFB; specifically, Capitol's bond cited solicitation number F49642-92-B-A096 instead of the correct IFB No. F49642-93-B-A096. [Emphasis added.] The bond, however, provided for a penal sum of "20 percent of [the]

bid price," and correctly identified the bid opening date as September 24 and the solicitation requirement as construction.

SEEMA first protests the validity of Capitol's bid guarantee given the discrepancy in the solicitation number on the bid bond.

The submission of a required bid bond or bid guarantee is a material condition with which a bid must comply at the time of bid opening to be responsive. Blakelee Inc., B-239794, July 23, 1990, 90-2 CPD ¶ 65. The sufficiency of a bid bond depends on whether the surety is clearly bound by its terms; where the liability of the surety is not clear, the bond is defective. Techno Eng'g & Constr., Inc., B-243932, July 23, 1991, 91-2 CPD ¶ 87. If at the time of bid opening it is uncertain whether the bidder has furnished a legally binding bond, the bid must be rejected as nonresponsive. Federal Acquisition Regulation § 28.101-4(a); A&A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

The solicitation number referenced in a bid bond is a material element of the bond affecting its acceptability. Joseph B. Fay Co., B-241769.2, Mar. 1, 1991, 91-1 CPD ¶ 234. A bid bond that cites an incorrect solicitation number may nevertheless be acceptable where there are clear indicia on the face of the bond that otherwise identify it with the correct solicitation. Compare Kirila Contractors, Inc., 67 Comp. Gen. 455 (1988), 88-1 CPD ¶ 554 (bid bond was acceptable despite showing an incorrect solicitation number where the bond referenced the correct bid opening date and there were no other on-going solicitations to which the bond could refer) with Kinetic Builders, Inc., 65 Comp. Gen. 871 (1986), 86-2 CPD ¶ 342, aff'd, Fitzgerald & Co., Inc.--Recon., B-223594.2, Nov. 3, 1986, 86-2 CPD ¶ 510 (citation to correct bid opening date in a bid bond that referenced an incorrect solicitation number did not sufficiently identify the bond with the correct solicitation where the cited solicitation number was that of another on-going procurement).


Here, Capitol's bid bond was sufficiently identified with the IFB such that the bond would be enforceable by the government against the surety. The bond correctly identified the bid opening date and the services sought by the IFB, and there are no other on-going procurements to which the bond's stated solicitation number could refer. It is true that the solicitation number cited on the bond is the same as an earlier Air Force procurement, which was opened and awarded 6 months prior to the opening of this IFB. However, inasmuch as the bond does not refer to another on-going solicitation and since it otherwise references the correct procurement, the incorrect

solicitation number cited on Capitol's bond was merely a typographical error that did not affect the acceptability of the bond. See Kirila Contractors, Inc., supra. Accordingly, the Air Force properly found Capitol's bid bond acceptable.

SEEMA also protests that Capitol, which submitted its bid as a Maryland corporation, was not a corporation "in good standing" with Maryland at the date of bid opening. In SEEMA's view, the fact that Capitol was not a corporation in good standing at the time of bid opening means that Capitol was not a corporation at the time of bid opening.

As a general rule a sealed bid award may not be made to an entity different from that which submitted the bid, and where a bid represents that it was submitted by a corporation, it should be disregarded if no such corporation exists. General Chem. Servs., Inc., B-241595, Jan. 30, 1991, 91-1 CPD ¶ 94. Here, however, Capitol was a viable Maryland corporation at the time of bid opening. In this regard, we have been informed by the responsible Maryland corporation office that, notwithstanding that Capitol was not in good standing at the relevant time, its charter remained in full force.¹ Capitol was therefore a viable corporation under Maryland law, whose bid could be accepted for award. See Rocky Mountain Log Homes, B-243292, July 10, 1991, 91-2 CPD ¶ 41; Triad Research, Inc., B-225793, July 6, 1987, 87-2 CPD ¶ 16.

The protest is denied.


for Robert P. Murphy
Acting General Counsel

¹Capitol was not "in good standing" because it did not timely pay a late filing penalty on its 1993 corporate personal property report. Capitol has since paid this penalty and is now "in good standing."